STATE OF MICHIGAN

COURT OF APPEALS

KENNETH J. SPEICHER and MARIE A. SPEICHER, Plaintiffs-Appellants, v TOWNSHIP OF COLUMBIA, Defendant-Appellee.	UNPUBLISHED January 21, 2003 No. 231446 Tax Tribunal LC Nos. 00-239194; 00-239196

Before: Murray, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs appeal from a decision of the Tax Tribunal in favor of defendant. We affirm.

Plaintiffs own a parcel on Saddle Lake in Van Buren County. There was a cottage on the parcel, which plaintiffs decided to tear down and replace in 1997. In assessing their options, plaintiffs knew that other landowners who had torn down cottages in the township and replaced them with new buildings with the same floor plan on the same foundation as the old cottage had been given non-consideration under MCL 211.27(2). Under this provision, normal repairs, replacement and maintenance are not considered in assessing the property for tax purposes until the property is sold. Because if they were granted non-consideration, plaintiffs' property taxes would be substantially lower, this was an attractive alternative to plaintiffs as opposed to replacing it with a larger structure that would be fully taxed (the other option they considered).

In 1997, Mrs. Speicher went to the Columbia Township office and spoke with the township's building inspector (and chairman of the tax board of review), Elizabeth Estavillo, regarding their rebuilding plans and whether they would receive non-consideration treatment. Estavillo advised that it was her understanding that plaintiffs would be entitled to non-consideration. Thereafter, Mrs. Speicher spoke with the township assessor, Harold Manning, regarding their plans to tear down the old cottage and replace it with a structure with the same floor plan. Manning agreed that plaintiffs would be entitled to non-consideration on the new building based upon the plan presented.

Plaintiffs went ahead with their building plans in 1998. However, when they received their 1998 property tax assessment, they learned that they were not granted non-consideration as expected. Plaintiffs appealed their property tax assessment for the 1998 tax year, along with other claims unrelated to the current appeal, ultimately bringing cases in both the circuit court

and tax tribunal. Both the circuit court and the tax tribunal dismissed for lack of subject matter jurisdiction. Plaintiffs appeal both cases to this Court. In *Speicher v Manning*, unpublished opinion per curiam (Docket Nos. 222815 & 224333, issued 9/7/2001), this Court affirmed, concluding that the circuit court correctly concluded that it lacked subject matter jurisdiction and that the tax tribunal had properly dismissed on the alternate ground of res judicata. Thereafter, plaintiffs challenged their 1999 assessment, again arguing the non-consideration issue, resulting in this appeal from the tax tribunal's decision in defendant's favor.

Plaintiff first argues that the tax tribunal should have applied equitable estoppel to prevent defendant from denying non-consideration status to plaintiffs' property. Defendant argues that the tax tribunal is without authority to grant equitable relief. We agree. This Court recently noted in *Electronic Data Systems Corp v Township of Flint*, 253 Mich App ___; ___ NW2d ___ (Nos. 225610, 225686, 225681, 225682, 225683, 225684, 225687, 225688, 225689 & 225690, issued 10/25/02), *slip op* at 6, that the tax tribunal lacks equitable powers:

> Further, the Tax Tribunal did not err by "refusing" to exercise its equitable powers as petitioner maintains. The Tax Tribunal's powers are limited to those authorized by statute, MCL 205.732; *Federal-Mogul Corp v Dep't of Treasury*, 161 Mich App 346, 359; 411 NW2d 169 (1987), and the Tax Tribunal does not have powers of equity, *id.* Thus, the Tax Tribunal does not have the authority to grant a request for a delayed appeal. *Curis Big Boy, Inc v Dep't of Treasury*, 206 Mich App 139, 142; 520 NW2d 369 (1994).

Thus, the Tax Tribunal correctly concluded that it was not a court of equity and, therefore, lacked the authority to grant the equitable relief of estoppel.

Next, plaintiffs argue that the Tax Tribunal erred when it determined that plaintiffs' property was assessed uniformly. We disagree.

The essence of plaintiffs' argument is that particular property owners in the township had previously received non-consideration assessments on their property under similar circumstances under which plaintiffs were denied non-consideration. Plaintiffs argue that, as a result, they are not being uniformly assessed as required by Const 1963, art 9, § 3 with those other taxpayers. This Court discussed the uniformity of assessment requirement in *Brittany Park Apartments v Harrison Twp*, 104 Mich App 81, 88; 304 NW2d 488 (1981):

> The Supreme Court has recognized a taxpayer's right to complain that his assessment was not made in uniformity with other assessments. *In re Appeal of General Motors Corp*, 376 Mich 373; 137 NW2d 161 (1965), *Titus v State Tax Comm*, 374 Mich 476; 132 NW2d 647 (1965). If the claim is based on lack of uniformity, the taxpayer must show that the ratio of assessed value to fair market value of his property is greater than the ratio of average assessed value to the average fair market value in the taxing district. A taxpayer also may claim that his assessment is in excess of 50% of the true cash value, in which case he need show only that his assessed value is greater than 50% of the fair market value. Such assessment may not be in excess of 50% of the true cash value either before or after the state equalization. *Consumers Power Co v Muskegon*, 13 Mich App

334; 164 NW2d 398 (1968). *DeWitt Twp v State Tax Comm*, 397 Mich 576, 579-580; 244 NW2d 920 (1976).

As *Brittany Park* makes clear, a claim of lack of uniformity must compare the taxpayer's assessment relative to true cash value to that of the taxing unit (i.e., the township) as a whole. It does not support the contention that a lack of uniformity may be established by comparing the ratio of assessed value to true cash value of the taxpayer's property to that of a few other isolated properties in the township.[1] Indeed, plaintiff is in essence arguing that, because the township made a mistake with a few other (though similarly situated) assessments in the township, the township is obligated to make the same mistake with plaintiffs' assessment.[2] Ultimately, however, the issue is not whether other property owners have been incorrectly assessed, but whether plaintiffs were properly assessed. To this end, plaintiffs make no argument or showing that their assessment was in excess of fifty percent of true cash value, or, for that matter, that the non-consideration rule actually does apply to this situation. Therefore, the Tax Tribunal did not err in upholding the assessment.

Affirmed. Defendant may tax costs.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald

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[1] Plaintiffs argue that to require a comparison of their assessment-to-true-cash-value ratio to the township's as a whole would require a private study which *Brittany Park* inferred would not be required. However, we do not read *Brittany Park*, *supra* at 90, as inferring anything about disapproving of requiring private studies. Rather, we read it as saying it is unlikely that a taxpayer could make such a showing because of it being such a massive undertaking requiring such a study, but that a taxpayer can always object to his assessment being over fifty percent of true cash value. That is, equalization cannot result in an assessment above fifty percent of true cash value in an effort to achieve uniformity. *Id.*

[2] In fact, the genesis of this dispute appears to be in a change of assessors in Columbia Township. The previous assessor, Harold Manning, granted the non-considerations where a cottage was completely torn down and replaced, so long as it was on the same foundation with the same floor plan. The new assessor, Jerry Thibodeau, believes that that practice was an improper application of the non-consideration rule. The Tax Tribunal appears to agree with Assessor Thibodeau.